



## DEPARTMENT OF LABOR

### Employment and Training Administration

Comment Request for Information Collection for Form ETA-9035, Labor Condition Application for Nonimmigrant Workers (OMB Control Number 1205-0310), Revision of a Currently Approved Collection.

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the extension of the approval for the information collection, Office of Management and Budget (OMB) Control Number 1205-0310, containing Form ETA-9035 – Labor Condition Application for Nonimmigrant Workers; Form ETA-9035E – Labor Condition Application for Nonimmigrants Workers (electronic version); Form ETA-9035CP – General Instructions for the 9035 & 9035E; Wage and Hour Division (WHD) Form WH-4 – Nonimmigrant Worker Information Form; and other H-1B related information collection and retention requirements, which expire March 31, 2015. A copy of the proposed information collection request can be

obtained by contacting the office listed below in the addressee section of this notice.

The forms are used by employers in DOL's H-1B, H-1B1, and E-3 nonimmigrant temporary employment-based programs to request permission to bring foreign workers to the United States as nonimmigrants and for workers and interested persons to file complaints with DOL's Wage and Hour Division.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit written comments to Brian Pasternak, National Director of Temporary Programs, Office of Foreign Labor Certification, Room C-4312, Employment & Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Telephone number: 202-693-3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627 (TTY/TDD). Fax: 202-693-2768. E-mail: [ETA.OFLC.Forms@dol.gov](mailto:ETA.OFLC.Forms@dol.gov) subject line: ETA-9035. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The information collection is required by sections 212(n) and (t) and 214(c) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(n) and (t), and 1184(c)). The Department and the Department of Homeland Security have promulgated regulations to implement the INA. Specifically for this collection, 20 CFR 655 Subparts H and I, and 8

CFR 214.2(h)(4) are applicable. The INA mandates that no alien may enter the United States (U.S.) for the purpose of performing professional work on a temporary basis unless the U.S. employer makes certain attestations to the Secretary of Labor (Secretary). Those attestations include that the working conditions for the alien will not adversely affect the working conditions of similarly employed U.S. workers; that the salary will be the higher of the prevailing wage for the occupational classification in the area of employment or the actual wage paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; that there is no strike or lockout in the course of a labor dispute in the occupational classification at the place of employment; and that the employer has met all other requirements of the program as specified in the regulations. This Information Collection Request (ICR) has been classified as a revision only because of a modification to Form WH-4 to remove a reference to the now defunct Employment Standards Administration (ESA). In addition, the forms have been made accessible for persons with disabilities, in a way that should be transparent to users. Data collected on forms approved under this ICR remains the same.

## **II. Review Focus**

DOL is particularly interested in comments that:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond,

including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

### **III. Current Actions:**

In order to meet its statutory responsibilities under the INA, the Department needs to extend an existing collection of information pertaining to labor condition applications that are used in the H-1B, H-1B1, and E-3 visa programs and allow employers to bring foreign labor to the U.S. on a temporary basis.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205-0310. OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2015. The DOL seeks to extend PRA authorization for this revised information collection for three (3) more years.

In the past the respondents have been for-profit businesses and not-for-profit institutions. On rare occasions the respondents have been local, State, tribal

governments, or the Federal government. The Secretary uses the collected information to determine if employers are meeting their statutory and regulatory obligations.

A. General

Title: Labor Condition Application for H-1B, H-1B1, and E-3 Non-immigrants.

Type of Review: Revision.

OMB Number: 1205-0310

B. ETA Forms and Information Collections

Title(s): Labor Condition Application for Nonimmigrant Workers, and General Instructions for the 9035 & 9035E.

Affected Public: Private Sector (businesses or other for-profits and not-for-profit institutions) and State, Local, and Tribal Governments.

Form(s): ETA forms ETA-9035, ETA-9035E, and ETA-9035CP

Total Annual Respondents: 57,589

Annual Frequency: On occasion

Total Annual Responses: 1,299,416

Average Time per Response: 26 minutes

Estimated Total Annual Burden Hours: 567,485

Total Annual Burden Cost for Respondents: \$0

C. WHD Form

Title(s): Nonimmigrant Worker Information Form.

Affected Public: Individuals or Housholds.

Form(s): WH-4

Total Annual Respondents: 425

Annual Frequency: Once

Total Annual Responses: 425

Average Time per Response: 20 minutes

Estimated Total Annual Burden Hours: 142

Total Annual Burden Cost for Respondents: \$0

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record. Commenters are encouraged not to disclose private and/or sensitive information (e.g., Social Security Numbers or confidential business information).

**Portia Wu,**

Assistant Secretary for Employment and Training, Labor.

**BILLING CODE – 4510-FP-P**

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